

A "retailer maintaining a place of business in Illinois," as that term is described in 86 Ill. Adm. Code 150.201(i), is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801. (This is a GIL).

March 25, 1999

Dear Xxxxx:

This letter is in response to your letter dated February 1, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

We are planning on being the distributor of a piece of agricultural equipment that once incorporated in an operating facility, becomes part of Real Property. The retail value of this equipment will vary from \$8,500 to \$12,000 depending on the options they purchase with the basic equipment.

Since we will be the sole distributor of this equipment, there is a good possibility that we will be selling this to many states other than Nebraska. We would like to be informed as to the Sales Tax requirements for your state.

Each piece will be sold either as a new piece of equipment, or in some instances, will be installed by COMPANY. In all cases, this equipment will be shipped either by UPS or common carrier and will become part of the agricultural operation.

1. When we sell this equipment and are not required to install it, are we required to obtain a sales tax permit in your state and to collect your state sales tax?
2. If the terms of our agreement specify that COMPANY installs this equipment, what are our sales tax requirements?
3. Please give us our tax requirements if the person installing this equipment would be either a COMPANY employee or an independent contractor.
4. What are the Corporate Income Tax Filing Requirements for your State?
5. Is there a minimum dollar amount, quantity or number of transactions where we are required to be licensed or apply for a Sales Tax Permit?

We would appreciate receiving a reply at your earliest convenience.  
Thank you for your assistance.

An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Another type of retailer is the retailer maintaining a place of business in Illinois. The definition of a "retailer maintaining a place of business in Illinois" is described in 86 Ill. Adm. Code 150.201(i), enclosed. This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801, enclosed. The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The United States Supreme Court in Quill Corp. v. North Dakota, 112 S.Ct 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax laws. The Supreme Court has set out a 2-prong test for nexus. The first prong is whether the Due Process Cause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. Quill at 1910.

The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause. A physical presence is not limited to an office or other physical building. Under Illinois law, it also includes the presence of any agent or representative of the seller.

The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax on the purchase of the out-of-State goods and have a duty to self-assess their Use Tax liability and remit the amount directly to the State. The Use Tax rate is 6.25%.

Please find enclosed copies of 86 Ill. Adm. Code 130.1940 and 130.2075 regarding the tax liabilities of contractors in Illinois. The term "construction contractors" includes general contractors, subcontractors, and specialized contractors such as landscape contractors. The term "contractor" means any person or persons who are engaged in the occupation of entering into and performing construction contracts for owners. In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. Therefore, any tangible personal property that general contractors or subcontractors purchase that will be permanently affixed to or incorporated into real property in this State will be

subject to Use Tax. If contractors did not pay the Use Tax liability to their suppliers, contractors must self-assess their Use Tax liability and pay it directly to the Department.

As previously stated, contractors are deemed end users of property that is purchased for incorporation into real property. If general contractors did not purchase the tangible personal property, then the general contractors cannot be held liable for tax due on another entities' purchases. If subcontractors are utilized and are acting as construction contractors, the transaction between the general contractors and the subcontractors is not a taxable transaction. The subcontractors incur Use Tax liability on any tangible personal property that they purchase for incorporation into real estate. If, however, general contractors make purchases and then contract to have subcontractors do the installation, the general contractors incur Use Tax liability because they are making the purchases of such tangible personal property.

In Illinois, organizations that are determined by the Department to be exclusively charitable, religious, educational, or a governmental body, are issued tax exemption identification numbers ("E" numbers). Organizations holding such numbers are exempted from paying sales tax on organizational purchases. The organization must obtain and present this number to a retailer, however, before it can make a tax-free purchase. Suppliers selling tangible personal property to such exempt organizations must retain the "E" number in order to document the exempt sale.

As stated above, contractors are generally considered to be the end users of tangible personal property they permanently incorporate into real estate and owe Use Tax upon their purchases. However, contractors who physically incorporate tangible personal property into real estate owned by holders of "E" numbers can purchase such property tax-free by providing their suppliers with the certification described in Section 130.2075(d), as well as the "E" number of the group into whose real estate that property will be incorporated. The suppliers should retain this information in order to document the tax-exempt sale.

Sales of tangible personal property to a construction contractor who does not incorporate the items into real estate owned by an exempt organization are subject to tax. Items which are purchased tax-free because of their intended incorporation into real estate owned by an exempt organization, but which are not, in fact, incorporated into real estate owned by an exempt organization, are also subject to tax.

The basic State rate of tax under the Retailers' Occupation Tax Act is 6.25%. In addition to the basic State rate of tax, depending upon the selling location of the retailers, there may be local taxes that apply in addition to the basic State rate of tax. The basic State rate of tax under the Use Tax Act is 6.25%.

Construction contractors incur Retailers' Occupation Tax liability when they engage in selling any kind of tangible personal property to purchasers without permanently affixing the tangible personal property to real estate. See 86 Ill. Adm. Code 130.1940(b)(1). Construction contractors can purchase such tangible personal property tax-free for resale by providing their suppliers with Certificates of Resale. See 86 Ill. Adm. Code 130.1405, enclosed. Their

Illinois suppliers and suppliers who are "retailers maintaining a place of business in Illinois" (see discussion above), must retain certificates of resale in order to document the resale exemption. If companies become or are out-of-state Use Tax collectors, they must either collect Use Tax or document an exemption when shipping their merchandise into Illinois.

Even though sales may be at retail, the Illinois Retailers' Occupation Tax (i.e. sales tax) does not apply to sales of machinery and equipment used primarily in production agriculture or in State or federal agricultural programs. Machinery means major mechanical machines or major components thereof contributing to the production agriculture process or used primarily in State or federal agricultural programs. Equipment means any independent device or apparatus separate from any machinery, but essential to production agriculture.

Please be informed that for purposes of the exemption, farm machinery does not include improvements to real estate such as fences, barns, grain bins, silos and confinement buildings. See 86 Ill. Adm. Code 130.305(i), enclosed. Similarly, equipment does not include ordinary building materials to be permanently affixed to real estate, Section 130.305(k). However, certain machines and equipment may qualify even though they are installed as realty improvements. Some examples are augers, grain dryers (heaters and fans), automated livestock feeder bunks (but not ordinary building materials), specialty heating and lighting equipment specifically required for the production process, i.e., ultraviolet lights, and specialty heaters for incubation, farrowing crates, and portable panels for confinement facilities and flooring used in conjunction with waste disposal machinery. See 86 Ill. Adm. Code 130.305(i) and (k).

Please note that Section 130.305(i) provides further that "[a] person (such as a plumbing contractor) who contracts to provide and install an exempt machine or equipment permanently into real estate must obtain an exemption certificate from the person purchasing the machine. The contractor must furnish certification to the seller, attaching the certificate of the purchaser in order to claim the exemption."

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.